IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.658 OF 1995
WITH
CRIMINAL APPEAL NO. 677 OF 1995

(1) CRIMINAL APPEAL NO. 658 OF 1995

Shri.Yeshwant Dattatatraya Desai, Adult, Occ: Service Octroi Naka Officer, Pune Municipal Corporation Shivaji Nagar, Pune. ..Appellant (Ori.Complainant)

Versus

1. Smt.Jayashri Prabhudas Chhabriya, aged about 46 years Occ:Business
2. Shri.Deepak Prabhudas Chhabriya, aged about 27 years Occ: Business
3. Shri.Vinod Prabhudas Chhabriya, aged about 23 years, Occ: Business all residents of 890 Ravivar Peth, Pune-02
4. State of Maharashtra ..Respondents (Respdts.1 to 3 Ori.Accused nos. 1 to 3 and No.4 Respondent)

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Mr.R.M.Pethe i/b R.G.Ketkar Advocate for Appellant
None for Respondent nos.1 to 3 though served.
Mr.A.S.Shitole, A.P.P. for State.

....

WITH

(2) CRIMINAL APPEAL NO. 677 OF 1995

Shri.Yeshwant Dattatatraya Desai, Adult, Occ: Service Octroi Naka Officer, Pune Municipal Corporation Shivaji Nagar, Pune. ..Appellant (Ori.Complainant)

Versus

1.	Smt.Jayashri Prabhudas Chhabriya, aged about 46 years Occ:Business	]
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Mr.R.M.Pethe i/b R.G.Ketkar Advocate for Appellant
None for Respondent nos.1 to 3 though served.
Mr.A.S.Shitole, A.P.P. for State.

....

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 2,2004

ORAL JUDGMENT:

1. Through the present appeals, the appellant i.e. Pune Municipal Corporation has challenged the judgments and orders dated 29th April, 1994 passed by the learned Additional Sessions Judge, Pune in Criminal Appeal No. 69 of 1985 and Criminal Appeal No. 70 of 1985. By the said judgments and orders, the learned Addl. Sessions Judge, Pune acquitted the appellants therein i.e. original accused nos.1

to 3 and the respondent nos. 1 to 3 in the present appeals of the offence under Section 398 of Bombay Provincial Municipal Corporation Act, 1949 read with Standing Order 28 and Rule 29 of the Octroi Rules, framed under the Act.

2. Briefly stated the prosecution case is as under:

. That the respondents-accused nos.1 to 3 are the partners of partnership firm "National Electronics" situated at Ravivar Peth, Pune.

. The facts relating to Criminal Appeal No. 658 of 1995 are that:

. On 27th September, 1983 the accused persons imported electronic goods weighing 183 kgs. from Delhi. The said goods were carried and brought to Pune under Railway Receipt No.972468. The accused persons took the delivery of the said parcel without making payment of octroi duty. The value of the goods was Rs.3,90,000/- and the octroi duty was assessed and calculated at Rs.11,700/-. As the amount of octroi duty of Rs.11,700/- was not paid, it is the prosecution case that the accused evaded the payment of octroi duty intentionally and infurtherence of their common intention. Hence, the

complaint came to be filed against the accused persons.

. The facts relating to Criminal Appeal No. 677 of 1995 are that:

. On 7th September, 1983 the accused persons imported electronic goods weighing 36 kgs. from Delhi. The said electronics goods were carried and brought to Pune Railway Station under Railway Receipt No. 154094. The accused took the delivery of the goods from the Railway Parcel Office. However, no payment of octroi duty was made. It is the case of the complainant P.W.1 Yeshwant Desai, Octroi Officer that the electronic goods were worth Rs.80,000/- and the octroi duty assessed as per the Rules on the said goods, was Rs.2400/-. The accused did not pay the octroi duty of Rs.2400/- and the accused evaded the octroi duty intentionally thereby committed breach of the Octroi Rules. Hence, complaint came to be filed.

3. The particulars of the offences were read over and explained to the accused in both the cases. The accused pleaded not guilty and claimed to be tried.

4. The defence of the accused persons is that they

never intended to evade the payment of octroi duty. The assessment made by the complainant P.W.1 Yeshwant Desai is based on wrong assumption that the goods imported were electronic goods. It is their defence that there is no description of the electronic goods in the Railway Receipt No.154094 dated 7th September, 1983 and Railway Receipt No.972468 dated 27th September, 1983. According to the accused, similar goods were imported by them from Delhi and brought to Pune under the Railway Receipt No.931229 under which the Radios were imported by the accused persons. The goods were weighing 60 kgs. and the assessment for the purpose of octroi on the said goods was made at Rs.1869/-. Accordingly, the accused paid the octroi duty of Rs.56.10 ps. to Pune Municipal Corporation. It is the case of the respondents that Transistors were imported by them under Railway Receipt No.4303592 on 7th February, 1978 and octroi duty of Rs.173/- was paid by them to P.M.C. All these documents were produced in the lower Court.

. It is the specific defence of the respondents nos.1 to 3 that they were ready and willing to pay the octroi duty as per the Rules. According to them, they have received the Transistor sets and table models in the consignments whose cabinets are

big in size, but the price is very cheap. Their defence is that the salesman went to pay the octroi duty but the octroi could not be paid at that time as the dispute in relation to nature of property was not settled.

5. The crucial question in the present case is whether the accused persons evaded the payment of octroi duty with intention of defrauding the Pune Municipal Corporation. The complainant P.W.1 Yeshwant Desai has admitted in his cross-examination that accused no.2 Deepak Chhabriya met him and thereafter he was directed to see the Octroi Superintendent. The complainant has further admitted that bill in question was shown to him by accused no.2 Deepak. It is the case of the respondents from the beginning that as the goods were similar to the goods earlier imported by them, assessment ought to be made on the same lines as the goods which were covered by Railway Receipt Nos. 931229 and 4303592. On the basis of the evidence on record, the learned Judge has come to the conclusion that there was no willful or dishonest intention on the part of the accused for evading payment of octroi duty.

6. The learned advocate for the appellants has

relied upon a decision of this Court in the case of **Hari Pandurang Bhave Vs. Sonba Kondiba Bankar and others reported in 2000(2) Mh.L.J.613.** Reliance was placed on the observations of this Court in the said case that "if any party imports the goods within the municipal limits clandestinely and without disclosing about the same to the authorities by making a declaration in a prescribed form as per Schedule "A" under Standing Order 8, there is no question of making any demand for the payment of octroi duty. In case no such declaration is made, there is no question of making any demand under Rule 23. When respondents had evaded payment of octroi duty on the goods imported within the Municipal limits and had evaded the payment of octroi duty with the intention of defrauding the Corporation penalty under Section 398 of the Act is attracted and the accused were liable to be convicted." Further in the said case, it is observed that neither any of the respondents had paid any octroi duty nor the same were offered to be paid by the respondents. In the present case, it cannot be said that the accused persons were not willing to pay the octroi duty. Thus, the above decision would be of no help to the appellant. From the admission of the complainant, it is seen that accused no.2 Deepak had met the complainant in respect of imports in

question. From the evidence on record it does appear that the accused had the intention of paying the octroi in question and had thus met the octroi officers. It was the case of the accused persons that the goods when imported by rail which are subject to octroi on weight basis, shall be charged octroi at the rates prescribed for the goods on the weight and description mentioned in the Railway Receipts. However, in the present case the description of the goods in question was not given on the receipts. 931229 and 4303592. Looking to the evidence and looking to the facts and circumstances of this case, it cannot be said that there was any wilful or dishonest intention on the part of the appellants for evading the payment of octroi duty. The learned Sessions Judge directed that the goods be reassessed and the accused should pay the octroi at the reassessed rate. It is not the case of the appellant that the accused persons have not paid octroi duty as per the reassessment. Thus, looking to the evidence on record, the view taken by the learned Addl. Sessions Judge is a reasonable and possible view.

7. The learned Judge has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could have

been reasonably arrived at, then the mere circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair).** In the case of **C.Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

8. In the circumstances, I find no merit in these appeals and the same are dismissed.

[SMT.V.K.TAHILRAMANI,J.]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
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Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.R.M.Pethe i/b Mr.R.G.Ketkar
Advocates for Appellant
None for Respondent nos.1 to 3.
Mr.A.S.Shitole, A.P.P. for State.

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 2, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. Both the appeals are dismissed.

(V.K.TAHILRAMANI,J.)